



**Association of
Small Business
Development Centers.®**

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COMMENT

CG Docket No. 02-278

**In the Matter of Rules and Regulations Implementing
the Telephone Consumer Protection Act of 1991**

August 14, 2003

Members of the Commission
Federal Communications Commission
Washington, DC 20554

Dear Sirs and Madam:

I am writing to comment on the new rule governing unsolicited facsimile advertisements as it applies to nonprofit, government-funded service providers (such as our nation's Small Business Development Centers) communicating with clients and potential clients that the nonprofits are required by law to serve. The new rule is published in the Report and Order of the Federal Communications Commission adopted on June 26, 2003, in the Matter of the Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 published in the *Federal Register* of July 25, 2003, with an effective date of August 25, 2003.

Our nation's network of nearly 1,000 Small Business Development Centers (SBDCs) was created by Congress to provide free and at-cost counseling and training services to small businesses. SBDCs are funded primarily by the Federal and State governments and operate on a nonprofit basis, providing free counseling and at-cost training to small businesses. SBDCs are required by law (Section 21 of the Small Business Act) to serve small businesses.

The Commission's new rule governing unsolicited facsimile advertisements will unnecessarily and inappropriately impede communication between nonprofit, government-funded service providers such as the SBDCs and their clients and potential clients. The Commission's new rule, in effect, will contradict the Congressional intent that SBDCs reach out to the small business community to inform small businesses about free and at-cost services available to them as a result of a government program. The Commission's new rule should not apply to unsolicited facsimile advertisements sent by a nonprofit, government-funded service provider such as an SBDC to its own clients and potential clients.

The Telephone Consumer Protection Act of 1991 prohibits sending an unsolicited facsimile advertisement to any person without that person's prior express invitation or permission, and the Act defines "unsolicited advertisement" as any material advertising the commercial availability or quality of any property, goods or services. In its Report of June 26, the Commission revised its current rules and adopted a new rule requiring that "prior express invitation or permission" must be in the form of a signed, written statement.

As the Commission stated in its Report, "Congress determined that **companies** that wish to fax unsolicited advertisements to **customers** must obtain their express permission to do so before transmitting any faxes to them." [emphasis added] (See *Fed. Reg.*, July 25, 2003, p. 44168). Clearly, the Commission understands that the Telephone Consumer Protection Act is intended to protect **customers** from unsolicited facsimile advertisements sent by **companies** for commercial purposes. Surely Congress did not intend in the Telephone Consumer Protection Act to interfere with communications between **clients** and **nonprofit, government-funded service providers** such as the SBDCs. A facsimile advertisement from a non-profit, government-funded service provider such as an SBDC to its clients is different from a facsimile advertisement from a company to customers, and a facsimile advertisement from a nonprofit, government-funded service provider to its clients and potential clients should not be governed by the Commission's Report of June 26.

The purpose of a facsimile advertisement from a company to a customer is normally commercial. In contrast, the purpose of a facsimile advertisement from a nonprofit, government-funded service provider such as an SBDC to its clients and potential clients is to inform them about government-funded services available at no cost or on a non-profit basis. The purpose of a facsimile advertisement from a nonprofit, government-funded service provider such as an SBDC to its clients and potential clients is to fulfill its legal obligation to inform the eligible community about the availability of government-funded services. This is true even in the case where the nonprofit, government-funded service provider may derive some income from the activity being advertised to its clients.

For example, if a nonprofit, government-funded service provider such as an SBDC plans to hold a training seminar for small businesses, the nonprofit, government-funded service provider has the responsibility to inform the eligible community about the training seminar. And even if the nonprofit, government-funded service provider may derive some income from the training seminar, the nonprofit entity's primary purpose in advertising the training conference to its clients and potential clients is to inform them about the availability of government-funded services. Its purpose is not commercial.

The Commission's new rule requiring that "prior express invitation or permission" to send an unsolicited facsimile advertisement must be in the form of a signed, written statement, will unnecessarily and inappropriately interfere with a nonprofit, government-funded service provider's ability -- and responsibility -- to communicate with its clients and potential clients. I urge the Commission to reconsider the application of this new rule to unsolicited facsimile advertisements sent by a nonprofit, government-funded service provider to its clients and potential clients.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald Wilson". The signature is fluid and cursive, with a small flourish at the end.

Donald Wilson
President